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April 8, 2016

**VIA ECF AND CHAMBERS E-MAIL**

The Honorable Stuart M. Bernstein  
United States Bankruptcy Court  
One Bowling Green  
New York, New York 10004

Re: *Securities Investor Protection Corp. v. Bernard L. Madoff Inv. Secs. LLC*,  
Adv. No. 08-1789 (SMB) – Extraterritoriality Briefing Supplemental Authority

Dear Judge Bernstein:

We are counsel to Bank Austria Worldwide Fund Management in the above-referenced proceedings and liaison counsel for the subsequent transferee defendants that joined the Transferee Defendants' Motion to Dismiss Based on Extraterritoriality.

We write on behalf of all moving defendants in response to Mr. Sheehan's letter dated April 7, 2016 attaching Judge Daniels' March 30, 2016 decision in *Official Committee of Unsecured Creditors of Arcapita Bank BSC v. Tadhamon Capital BSC*. Judge Daniels' decision is not relevant to the issues presented by the subsequent transferee defendants' motion to dismiss. Judge Daniels addressed whether the Court could exercise personal jurisdiction over a defendant, not the extraterritorial application of U.S. law.

In *Arcapita*, a preference action, Judge Daniels addressed whether constitutional due process was met such that the Court could exercise personal jurisdiction over a defendant that allegedly received preferential transfers. That decision has nothing to do with the issue presented by the subsequent transferee defendants' motion to dismiss, *i.e.*, has the Trustee pled, consistent with the specific pleading requirements set forth in Judge Rakoff's extraterritoriality decision, facts sufficient to demonstrate that the relevant subsequent transfers were domestic. Moreover, Judge Rakoff specifically held that the use of "correspondent banks in the United States to process dollar-denominated transfers" is not "sufficient to make these foreign transfers domestic." *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, 513 B.R. 222, 228 n.1 (S.D.N.Y. 2014).

The Honorable Stuart M. Bernstein

Page 2

April 8, 2016

For the foregoing reasons, we respectfully submit that *Arcapita* is not relevant to the subsequent transferee defendants' motion.

Respectfully submitted,

*/s/ Franklin B. Velie*

Franklin B. Velie

cc: David J. Sheehan, Esq.  
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